

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SABRINA CHIN, on behalf of herself and all others si-
milarly situated,

Plaintiff,

-against-

RCN CORPORATION,

Defendant.

Case No. 08 Civ. 7349 (RJS)

**CERTIFICATION OF DISTRI-
BUTION OF CLASS NOTICE**

STATE OF VIRGINIA)
 ss.
CITY OF HERNDON)

PAUL ESKILDSEN, being duly sworn deposes and says:

1. I am a Vice President in the legal department of RCN Corporation ("RCN"). I am the RCN legal officer principally responsible for the oversight and management of this class action.

2. At my direction and under my supervision, and in accordance with (a) Section 8.1 of the Class Action Settlement Agreement (as amended) entered into by the parties to this action (the "Settlement Agreement"), and (b) the Order Adopting Report and Recommendation entered by this Court on March 29, 2010 (the "Order"), on April 19, 2010 RCN sent the court-approved form of Class Notice¹ to all members of the Settlement Class ("Class Members"), as follows:

(i) by email to approximately 263,177 Class Members who had provided

¹ Unless otherwise indicated, all capitalized terms referenced herein shall have the meanings assigned to them in the parties' Settlement Agreement. A copy of the form of Class Notice emailed and mailed to Class Members is annexed hereto as Exhibit A.

email addresses to RCN; and

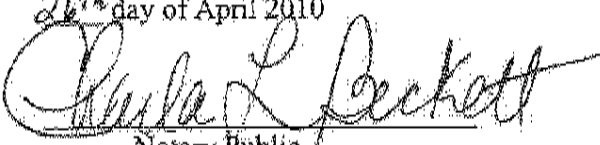
(ii) by first-class mail to approximately 183,480 Class Members, where no email address had been provided to RCN.

3. In addition, also at my direction and under my supervision, and in accordance with (a) Section 8.1 of the Settlement Agreement, and (b) the Order, on April 19, 2010 RCN posted on the RCN website at <http://rcn.com/official-notice> copies of:

- (i) the Class Notice;
- (ii) the Settlement Agreement;
- (iii) the Amendment to the Settlement Agreement; and
- (iv) this Court's Order.²

Each of the above-referenced documents is available for downloading from the referenced website.


Paul Eskildsen

Sworn to before me this
26th day of April 2010

Notary Public

² A screen shot from the RCN website showing the links to the referenced documents is annexed hereto as Exhibit B.

EXHIBIT A

**NOTICE OF PENDENCY
AND SETTLEMENT OF CLASS ACTION**

***Sabrina Chin v. RCN Corporation*, U.S. District Court, S.D.N.Y., Civil Action No. 08 Civ. 7349 (RJS)**

To: All persons in the United States who subscribed for RCN broadband Internet service ("RCN Broadband Internet") from August 19, 2003 through July 31, 2009 (the "Settlement Class Period") (such persons are hereinafter referred to as "Settlement Class Members"):

**PLEASE READ THIS NOTICE CAREFULLY.
IF YOU ARE A SETTLEMENT CLASS MEMBER, YOUR RIGHTS MAY BE
AFFECTED BY THE TERMS OF THIS PROPOSED SETTLEMENT**

I. EXPLANATION OF THE CASE

The parties in the above-referenced lawsuit have reached a settlement ("Settlement"), subject to the final approval of the Court. In this lawsuit, the plaintiff claims that RCN Corporation ("RCN"), without the knowledge or awareness of RCN broadband Internet subscribers, intentionally interfered with the subscribers' ability to use the Internet by delaying or blocking their Internet use and transmissions. Specifically, plaintiff alleges that RCN engaged in certain Internet network management practices ("Network Management Practices") which hindered or barred RCN broadband Internet subscribers' ability to engage in peer-to-peer ("P2P") transmissions through the use of P2P programs and protocols. Plaintiff further claims that these alleged practices materially and adversely affected RCN broadband Internet subscribers. RCN vigorously denies plaintiff's allegations. The Court has made no determination of the merits of the parties' claims.

II. SETTLEMENT TERMS

In the Settlement, without admitting any liability or wrongdoing, RCN has agreed to cease and desist all Network Management Practices which specifically affect P2P Internet traffic ("P2P Network Management Practices") for a period of 18 months, starting on May 1, 2009 (the "P2P Cessation Period"). RCN also agrees not to engage in Network Management Practices intended to curb or control congestion of the RCN Broadband Internet network and which do not specifically target P2P transmissions ("Non-P2P Network Management Practices") for a period of 18 months, starting on April 1, 2008 (the "Non-P2P Cessation Period"). RCN also confirms pursuant to the Settlement that it has not engaged in any Non-P2P Network Management Practices from April 1, 2008 to the present.

RCN also agrees that six months, twelve months and eighteen months after the commencement of the P2P Cessation Period, it will provide plaintiff's counsel with written certification from an appropriate RCN officer or executive stating that RCN has ceased all P2P Network Management Practices and has not resumed the use of any P2P Network Management Practices during the preceding six months.

RCN also agrees to pay for and subject itself to independent monitoring to confirm that RCN has ceased all P2P Network Management Practices and Non-P2P Network Management Practices, as described above, during the respective cessation periods.

RCN also agrees that in the event it implements any Network Management Practice at any time after the Non-P2P Cessation Period which causes, or potentially could cause, a materially adverse impact to any RCN broadband Internet subscriber (a "New Network Management Practice"), such implementation is subject to the terms and conditions set forth in detail in the Class Action Settlement Agreement, dated July 31, 2009 (as amended, January 12, 2010), available at <http://www.rcn.com/official-notices>. In addition, except in the case of emergency circumstances involving imminent harm to its network, RCN agrees that in the event it implements a New Network Management Practice prior to the end of the P2P Cessation Period, it will provide notice to RCN's broadband Internet subscribers no less than sixty (60) days prior to the implementation of such practice, and permit any RCN broadband Internet subscribers who object to RCN's implementation of the New Network Management Practice to opt-out of their subscription for such service, without penalty, within thirty (30) days after notice of the New Net-

work Management Practice is provided. Such notice is subject to the terms and conditions set forth in detail in the Class Action Settlement Agreement.

RCN has also agreed that it will not object to an application by Class Counsel for an award of attorney's fees of up to \$520,000, and an award of expenses of up to \$20,000, for services performed on behalf of the plaintiff and the proposed settlement class. RCN has agreed that, if approved by the Court, it will make a single payment of \$3,000 to the named plaintiff as an incentive award for representing the proposed settlement class.

In exchange for these agreements and other consideration, the Settlement, if approved by the Court, will preclude Settlement Class Members who do not exclude themselves as described below from bringing similar lawsuits related to their purchase of RCN broadband Internet service during the Settlement Class Period.

III. YOUR RIGHTS

If you fit within the definition of a Settlement Class Member (as defined above), do not wish to participate in this proposed settlement and wish to exclude yourself from the benefits of this proposed settlement, you must submit a written Request for Exclusion by first-class mail to Class Counsel (Michael R. Reese, Reese Richman LLP, 875 Avenue of the Americas, New York, NY 10001) and RCN's Counsel (Peter C. Neger, Bingham McCutchen LLP, 399 Park Avenue, New York, NY 10022). Your written Request for Exclusion must state the following: (a) an identification of the action, *e.g.*, *Chin v. RCN Corporation*; (b) your full name, address, dates of subscription to RCN broadband Internet service and RCN account number; and (c) a statement that you wish to be excluded from the settlement class. Your written Request for Exclusion must be post-marked not later than May 14, 2010.

As a Settlement Class Member, you may also, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you do not do so, you will be represented at no expense to you by Class Counsel. If you do not file a Request for Exclusion, you may object to the settlement or to the application of Class Counsel for an award of attorneys' fees and costs, in the manner set forth in the Class Action Settlement Agreement (*see below*). If your objection is rejected, you will be bound by the settlement and judgment as if you had not objected.

IV. MORE INFORMATION

This notice is only a **summary** of the terms of the settlement. As noted above, you may view the full Class Action Settlement Agreement at <http://www.rcn.com/official-notices>.

V. FINAL APPROVAL HEARING

A final approval hearing, at which time the Court will consider the adequacy, fairness and reasonableness of the settlement, whether the settlement should be finally approved by the Court and judgment should be entered dismissing the lawsuit on the merits and with prejudice, and the amount of attorney's fees and costs that should be awarded to Class Counsel, is scheduled for June 4, 2010, at 9:30 a.m. in Courtroom 21C of the United States District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007-1312.

DO NOT CALL THE COURT OR DEFENDANT'S COUNSEL. PLEASE NOTE THAT DEFENDANT'S EMPLOYEES AND TELEPHONE REPRESENTATIVES ARE NOT AUTHORIZED TO PROVIDE ANY INFORMATION RELATING TO THIS NOTICE, THE SETTLEMENT OR ANY CLAIMS YOU MAY HAVE.

Dated: April 19, 2010

BY ORDER OF THE UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT OF NEW YORK.

EXHIBIT B

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- [Amendment to Class Action Settlement Agreement: Sabrina Chin v. RCN Corporation](#)
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